

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:
Frederick W. Ryan, Jr., et al.) Attorney Docket No.: F-775
Serial No.: 10/707,510) Customer No.: 00919
Filed: December 18, 2003) Examiner: Fadey S. JABR
Confirmation # 1509) Group Art Unit: 3628
) Date: March 9, 2009

Title: **SYSTEM AND METHOD FOR FACILITATING REFUNDS OF
UNUSED POSTAGE**

Mail Stop Appeal Brief- Patents
Commissioner for Patents
Alexandria, VA 22313-1450

APPELLANTS' BRIEF ON APPEAL

Sir:

This is an appeal pursuant to 35 U.S.C. § 134 and 37 C.F.R. §§ 41.31 et seq. from the rejection of claims 1, 3-12, 14 and 16-23 of the above-identified application mailed October 9, 2008. This Brief is in furtherance of the Notice of Appeal transmitted January 9, 2009. Accordingly, this brief is timely filed. The fee for submitting this Brief is \$540.00 (37 C.F.R. § 1.17(c)). Please charge Deposit Account No. **16-1885** in the amount of \$540.00 to cover these fees. The Commissioner is hereby authorized to charge any additional fees that may be required for this appeal or to make this brief timely or credit any overpayment to Deposit Account No. **16-1885**.

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I. Real Party in Interest

The real party in interest in this appeal is Pitney Bowes Inc., a Delaware corporation, the assignee of this application.

II. Related Appeals and Interferences

There are no appeals or interferences known to Appellants, their legal representative, or the assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1, 3-12, 14 and 16-23 are pending in the application with claims 2, 13 and 15 canceled. Claims 1, 3-12, 14 and 16-23 are in the case and under rejection of the Examiner, standing at least twice rejected.

Claim 1 is in the case and stands rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to satisfy a written description requirement.

Claim 1 is in the case and stands rejected under 35 U.S.C. 112, second paragraph, as allegedly indefinite.

Claims 1, 3-12, 14 and 16-23 (1, 3-12 and 14-22, *sic*) are in the case and stand rejected under 35 U.S.C. 103(a) as allegedly rendered obvious by U.S. Patent Application Publication No. 2004/0044586-A1 by Gullo, et al. ("Gullo '586") in view of U.S. Patent Application Publication No. 2003/0101147-A1 by Montgomery, et al. ("Montgomery '147").

Appellants hereby appeal the final rejection of claims 1, 3-12, 14 and 16-23.

IV. Status of Amendments

There are no amendments to the claims filed subsequently to the Final Office Action of October 9, 2008. Therefore, the claims set forth in Appendix A to this brief are those as set forth before the final rejection.

V. Summary of Claimed Subject Matter

Appellants' invention as presently claimed relates generally to new and useful systems and methods for processing refund requests in a postage system. In at least one embodiment, after two failed print attempts using an Internet postage system, the user is offered a refund without requiring the user wait for a test period to expire. See Specification at ¶¶ 0002, 0020-23 and FIGs. 1, 8-10.

As shown in FIG. 1, reproduced below, an illustrative postage payment and refund system (shipping and/or postage label processing system 100) is described.

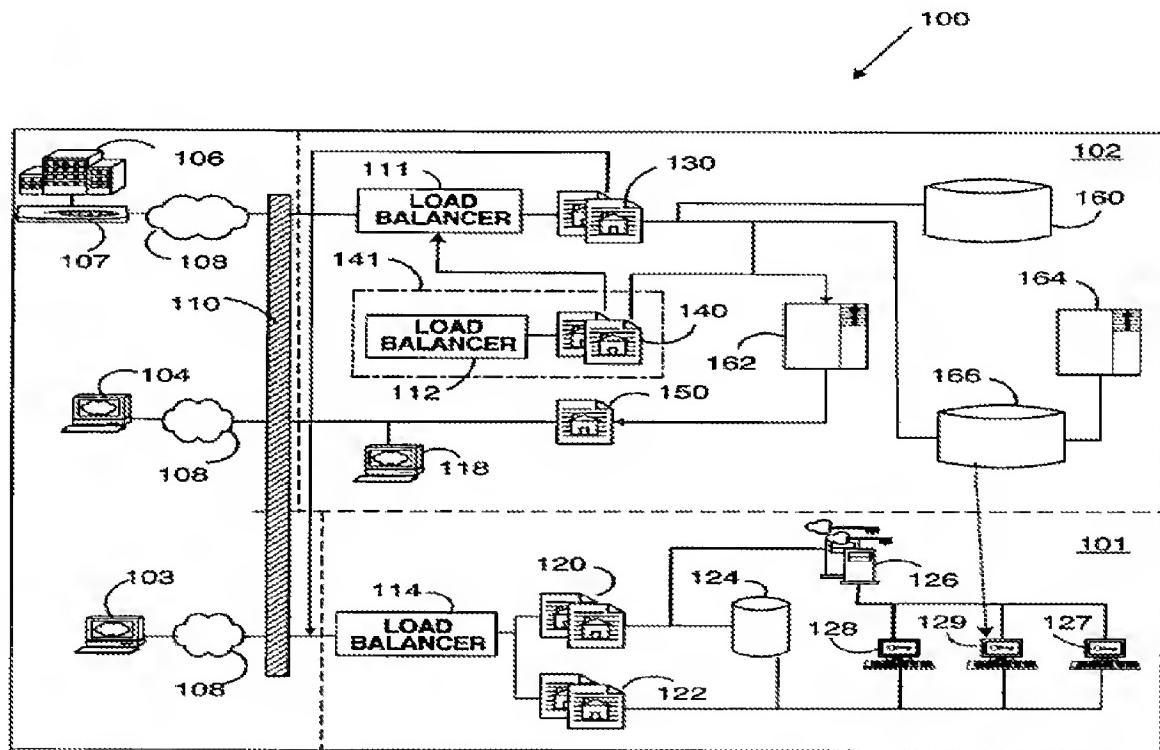


FIG. 1

Here, an illustrative e-commerce company xyz Co. 106 wishes to provide postage and/or shipping labels to its customers. The company 106 intends to act as a postage broker for its customers. The postage provider company has a firewall 110. A traditional virtual meter postage system includes an online Internet postage metering system environment 101, such as the CSO having production redundant servers 120, and 122, key management server 126, meter account database 124 and load balanced

by system 114. A traditional heavy client CSO user 103 communicates through the firewall 110 to the traditional CSO environment 101 through a load balancer 114. The IBDS Web servers 130 are connected to the external brokers 106 using a load balancer 111. The IBDS Web servers 130 are connected to the front end of the traditional CSO load balancer 114. The IBDS environment 102 includes a database 160 and a data-logging server 162. The IBDS environment 102 includes IBDS Administrative server 164 that is used to instantiate new postage broker accounts and meters. The IBDS environment 102 allows a United States Postal Service (USPS) Officer system 104 to have access through the firewall 110. The IBDS environment 102 includes a help desk system 118 and an internal USPS Customer Service Representative (CSR) web server 150. The IBDS environment 102 includes an IBDS Database 166 that communicates with the ECS console 129 of the traditional CSO environment 101. The IBDS Database 166 is a SQL Server 2000 cluster.

The IBDS environment 102 allows one or more external postage brokers such as xyz Co. 106 to have access to the IBDS web servers 130. The postage brokers 106 may broker postage to customers and provide access to shipping services by providing a shipping label with tracking number and optional special services. Similarly, the postage broker may use the system for its internal postage and shipping needs. It will be understood that broker 106 may be the same entity that operates the IBDS environment 102. Postage dispensing systems may be subject to fraud attacks. The systems described in the illustrative embodiments herein have several pieces of data available that may be logged and used for fraud detection purposes. For example, each digitally signed request for postage received from the broker is logged. Additionally, all requests/transactions are logged. The system also maintains a list of successful shipping label/postage indicia prints and logs unsuccessful print attempts and refund requests. The fraud detection mechanism detects anomalies in the logged data and is described herein in FIG. 8. See Spec. at ¶¶ 0043-52 and FIG. 1.

With reference to FIG. 8, reproduced below, a process for logging print data and calculating a fraud flag ratio according to an illustrative embodiment of the present application is shown. In one embodiment, a customer could be trusted not to commit

fraud in a refund request. For example, if the postage label printed incorrectly twice, the customer would be charged for postage that was not used. The customer would then have to request a postage refund. However, in a preferred embodiment, tracking information is used in determining whether to honor a refund request. Alternatively, the refund request may be honored and data collected for later use to detect any fraud. See Spec. at ¶¶ 0092-93 and FIG. 8, 822, 826, 828.

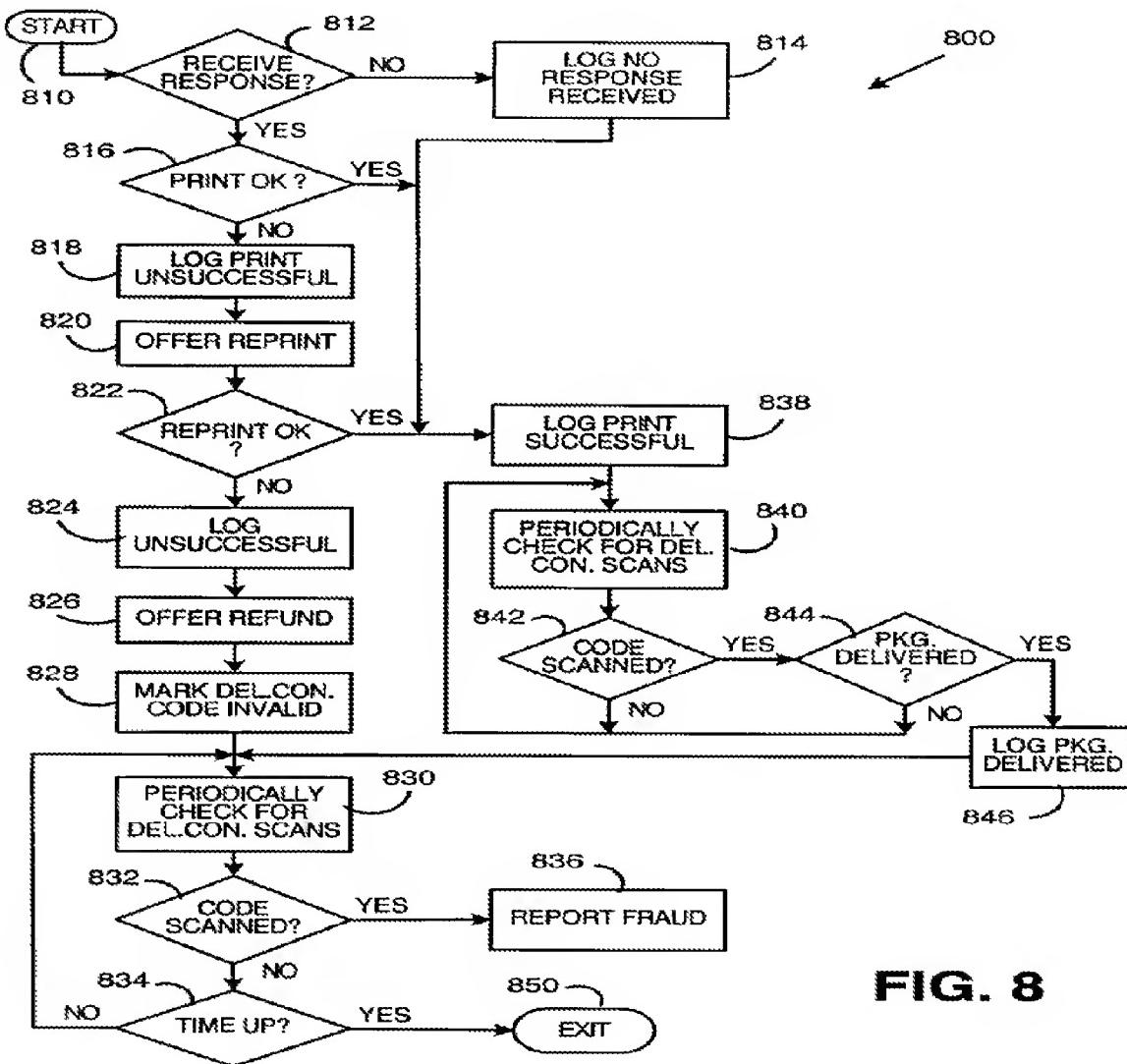


FIG. 8

With reference to FIG. 9, reproduced below, a process for processing a postage refund request 900. The user may be provided an interactive interface listing all recent postage dispensed and offered a selection screen for postage refund selection. The IBDS postage provider system determines if the refund request is valid including

whether the refund request corresponds to a prior postage dispense. The IBDS postage provider system determines if the particular delivery confirmation PIC code being tracked. The system then checks whether the refund request had been initiated within an acceptable time frame such as a six-month window that may be established by the postal authority. The IBDS system then checks whether the delivery confirmation number is active and whether it has been observed in the mail stream. Optionally, the system waits for a period of time and then determines if the mail piece in question has been observed in the mail stream. For example, the system may wait one week and then determine whether the mail piece has been observed in the mail stream. See Spec. at ¶¶ 0101-105 and FIG. 9.

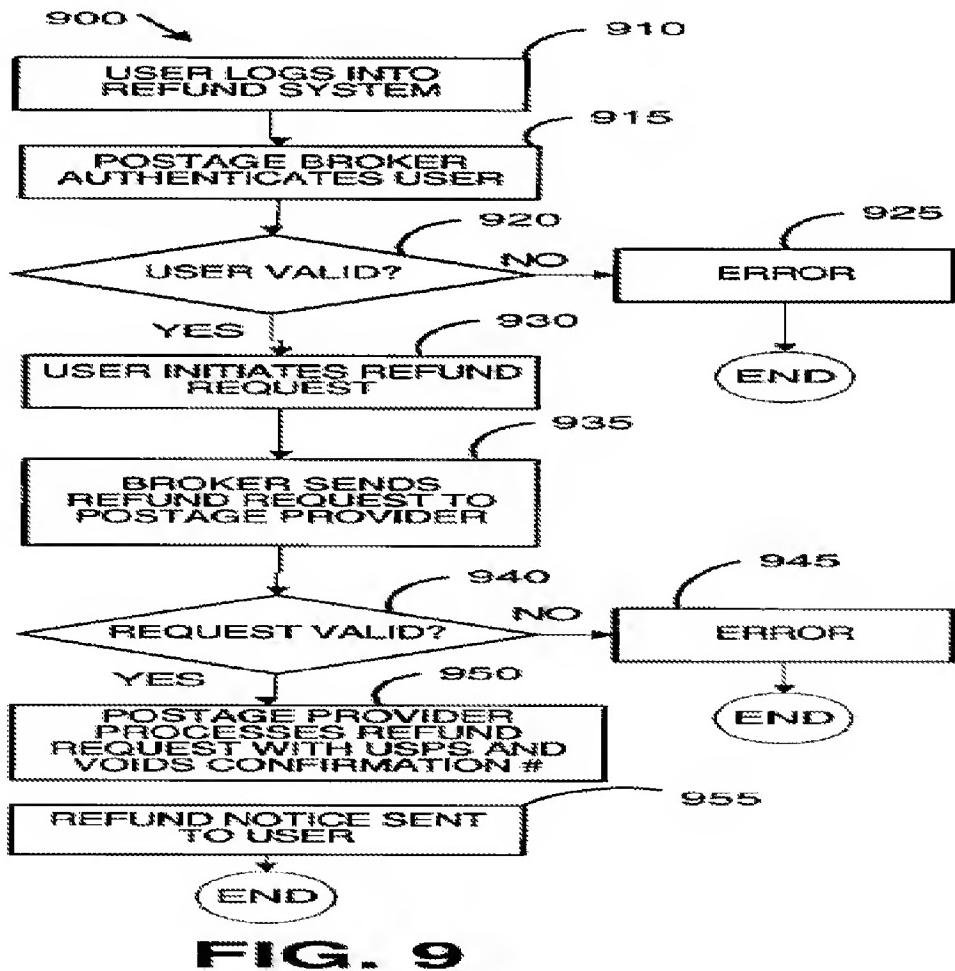


FIG. 9

With reference to FIG. 10, reproduced below, a process for paying postage refunds 1000 is shown. In step 1010, the postage provider 102 accumulates valid

refund requests over a period of time such as one day or one week and organizes them in groups by the postage broker that processed them. In step 1015, the postage provider sends the group of refund requests to the postal authority. In step 1020, the postage provider also sends refund data to the postage broker to facilitate the distribution of the aggregate refund funds that are to be received from the postal authority. In step 1025, the postal authority sends an aggregate refund payment to the postage broker corresponding to one or more of the refund request groups previously sent by the postage provider. In step 1030, the postage broker moves particular refund funds from the aggregate account to the individual accounts of the users that have requested valid refunds. See Spec. at ¶¶ 0106-108 and FIG. 10.

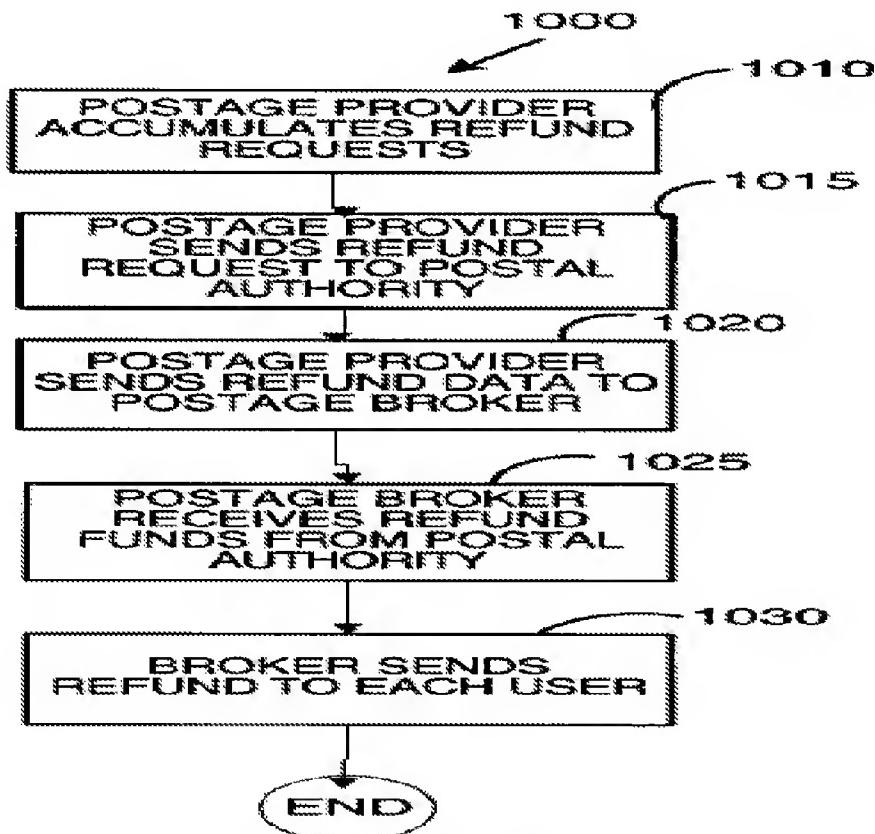


FIG. 10

Independent claim 1 is shown with illustrative annotated references to the specification, reference numerals and figures:

1. . A method for processing a postage refund request for a mail piece comprising (FIGs. 8-10, ¶¶ 0092-108):

receiving a refund request including a tracking identifier from a user system (822, ¶ 0092);

processing and paying the refund request substantially immediately after receiving the request and before review of the refund request to determine validity (826, ¶ 0092);

then determining if the refund request is valid (832);

if the refund request is not valid, initiating a refund error process (836), wherein,

the determination of whether the refund request is valid includes determining whether the tracking identifier has been observed in a mail stream; and

monitoring the tracking identifier after processing the refund request in order to determine if the mail piece is used after a refund payment (832).

Independent claim 20 is shown with illustrative annotated references to the specification, reference numerals and figures:

20. A method for processing a postage refund request for a plurality of mail pieces comprising (FIGs. 8-10, ¶¶ 0092-108):

receiving a plurality of refund requests, each including an associated tracking identifier from each of a respective plurality of user systems (1015);

determining if each of the refund requests is valid (1020);

for each of the refund requests, if the refund request is not valid, initiating a refund error process (1020),

for each of the refund requests, if the refund request is valid, processing the refund request (1020), wherein,

the determination of whether the refund request is valid includes determining whether the tracking identifier has been observed in a mail stream during a variable test period for each of the mail pieces and processing the refund request includes sending aggregated refund request data to a postage broker, wherein the variable test period depends upon a tracking code lifetime period associated with the tracking identifier used on each of the respective mail pieces (¶ 0104).

Independent claim 21 is shown with illustrative annotated references to the specification, reference numerals and figures:

21. A method for processing a postage refund request for a mail piece comprising (FIGs. 8-10, ¶¶ 0092-108):
providing an interactive listing of at least two selections of recent postage transactions for a user (930);
receiving a refund request including a tracking identifier from a user system includes receiving a selection from the interactive listing (930);
determining if the refund request is valid (940);
if the refund request is not valid, initiating a refund error process (945),
if the refund request is valid, processing the refund request (950), wherein,
the determination of whether the refund request is valid includes determining whether the refund request corresponds to a prior postage dispense operation associated with the user and determining whether the tracking identifier has been observed in a mail stream during a variable test period for the mail piece and wherein,
processing the refund request further comprises crediting a postage account held with a postage provider,
wherein the variable test period depends upon the class of service of the mail piece.

Additional features of the invention are discussed below in the Argument section of this Brief. This summary is not intended to supplant the description of the claimed subject matter as provided in the claims as recited in Appendix A, as understood in light of the entire specification.

VI. Grounds of Rejection to Be Reviewed on Appeal

- A. Whether claim 1 is patentable under 35 U.S.C. §112, first paragraph.
- B. Whether claim 1 is patentable under 35 U.S.C. §112, second paragraph.
- C. Whether claims 1, 3-12, 14 and 16-23 are patentable under 35 U.S.C. §103(a).

VII. Argument

As discussed in detail below, Appellants respectfully submit that the final rejection of claims 1, 3-12, 14 and 16-23 does not meet the threshold burden of presenting a *prima facie* case of unpatentability. Accordingly, Appellants are entitled to grant of those claims. In re Oetiker, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

A Claim 1 is not Unpatentable under 35 U.S.C. § 112, first paragraph

Claim 1 is in the case and stand rejected under 35 U.S.C. 112, first paragraph as allegedly failing to comply with a written description requirement.

Appellants respectfully disagree with the rejection and urge its reversal for at least the reasons stated below. To the extent the written description requirement is a separate requirement beyond enablement, to establish such a rejection, the Examiner is required to show that the Appellants have submitted a new or amended claim and has not described the claimed invention such that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. See e.g., MPEP 2163.04, *citing Hyatt v. Dudas*, 492 F.3d 1365, 1370, 83 USPQ2d 1373, 1376 (Fed. Cir. 2007).

Appellants respectfully submit that the Examiner clearly has not met that burden because claim 1 is clearly supported and described at least in FIG. 8. The Examiner states that the following element was not originally described: “processing and paying the refund request substantially immediately after receiving the request and before review of the refund request to determine validity.” However, the claim is described at least at specification paragraph 0092 and in FIG. 8, especially in the steps 822-826.

Thus, the Examiner has not established a *prima facie* rejection. Accordingly, Appellants respectfully submit that the rejection is clearly in error and should be reversed.

B Claim 1 is not Unpatentable under 35 U.S.C. § 112, second paragraph

Claim 1 is in the case and stand rejected under 35 U.S.C. 112, second paragraph as allegedly indefinite.

Appellants respectfully disagree with the rejection and urge its reversal for at least the reasons stated below. In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the Examiner must consider the claim as a whole to determine

whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent. See e.g., MPEP 2163.04, *citing Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000).

Here, the Examiner states that the term “substantially” renders the claim indefinite. However, the term "substantially" is often used in conjunction with another term to describe a particular characteristic of the claimed invention and is entirely appropriate. Here, one of skill in the art would read the sequence of FIG. 8 (such as in steps 822-826) to determine and understand substantially immediately to refer to the time required in the process described such as including steps 822-826. See e.g., MPEP 2173.05(b), *citing Andrew Corp. v. Gabriel Electronics*, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988).

Accordingly, the Examiner has not established a prima facie rejection. Accordingly, Appellants respectfully submit that the rejection is clearly in error and should be reversed.

C Claims 1, 3-12, 14 and 16-23 are not Unpatentable under 35 U.S.C. § 103(a)

Claims 1, 3-12, 14 and 16-23 (1, 3-12 and 14-22, *sic*) are in the case and stand rejected under 35 U.S.C. 103(a) as allegedly rendered obvious by U.S. Patent Application Publication No. 2004/0044586-A1 by Gullo, et al. (“Gullo ‘586”) in view of U.S. Patent Application Publication No. 2003/0101147-A1 by Montgomery, et al. (“Montgomery ‘147”).

Appellants respectfully disagree with the rejection and urge its reversal for at least the reasons stated below.

In rejecting a claim under 35 U.S.C. §103, the Examiner is charged with the initial burden for providing a factual basis to support the obviousness conclusion. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967); *In re Lunsford*, 375 F.2d 385,

148 USPQ 721 (CCPA 1966); *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970). The Examiner is also required to explain how and why one having ordinary skill in the art would have been led to modify an applied reference and/or combine applied references to arrive at the claimed invention. *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995); *In re Deuel*, 51 F.3d 1552, 34 USPQ 1210 (Fed. Cir. 1995); *In re Fritch*, 972 F.2d 1260, 23 USPQ 1780 (Fed. Cir. 1992); *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). See *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. ___, 127 S.Ct. 1727, 1735 (2007) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* (quoting *Kahn*, 441 F.3d at 988)). See also, *Takeda Chem. Indus., Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350, 1357 (Fed. Cir. 2007) (To avoid improper use of hindsight, the Examiner must articulate “a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does” in an obviousness determination. (quoting *KSR*, 127 S. Ct. at 1731)).

See also, *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006)(Most inventions arise from a combination of old elements and each element may often be found in the prior art. However, mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole). Additionally, if the references when combined suggest an inoperative device, the Examiner may not use the references to establish a *prima facie* rejection. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339 (Fed. Cir. 2001)(if references taken in combination would produce a "seemingly inoperative device," then such references teach away from the combination and cannot serve as predicates for a *prima facie* case of obviousness).

Moreover, here, the cited references expressly teach away from the combination urged by the examiner and thus the combination is improper. See e.g., MPEP 2145 X.D, *citing In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983). The cited paragraph 0170 of Montgomery '147 clearly requires a review of the request before paying the

refund and clearly teaches away from paying before review. Accordingly, the references are not properly combined as suggested by the Examiner.

Independent claim 1 is patentable over the cited references. For example, claim 1 recites:

1. A method for processing a postage refund request for a mail piece comprising:
 - receiving a refund request including a tracking identifier from a user system;
 - processing and paying the refund request substantially immediately after receiving the request and before review of the refund request to determine validity;
 - then determining if the refund request is valid;
 - if the refund request is not valid, initiating a refund error process, wherein,
the determination of whether the refund request is valid includes determining whether the tracking identifier has been observed in a mail stream; and
 - monitoring the tracking identifier after processing the refund request in order to determine if the mail piece is used after a refund payment.

(emphasis added).

Appellants respectfully submit that the Examiner has not established a prima facie rejection because at least the highlighted elements are not taught or fairly suggested by the cited art. Furthermore, Appellants respectfully submit that the cited references do not teach or suggest such prompt refund processing followed by determining if the refund request is valid. As described above, the cited paragraph 0170 of Montgomery '147 clearly requires a review of the request before paying the refund and clearly teaches away from paying before review.

With regard to dependent claim 5, neither cited reference teaches or suggests determining if the mail piece is associated with the user that submitted the refund request. The cited portion of the reference apparently only describes identifying the postage transaction involved.

With regard to dependent claim 6, neither cited reference teaches or suggests providing a refund and then performing at least two observation determinations based upon a refund test period.

With regard to dependent claims 7-10, it is not clear that the Examiner has shown Montgomery '147 uses such codes as tracking numbers. For example, 218, 222 is described as the tracking ID and not reference numerals 256, 260, 258 or 262 as suggested by the Examiner.

With regard to dependent claims 11-12 and 16-18, it is not clear that the Examiner has shown Montgomery '147 uses refund request groupings. Nothing in the referred to FIG. 26-28 appears to describe anything other than periodic reporting of what postage had been refunded, not grouping requests for processing. Moreover, it does not appear that the system of Montgomery '147 could accommodate such requests. The described Table 3 shows only a single refund scenario describing a "duplicate destination" determination for two separate labels rather than duplicate prints and each having separate tracking numbers.

With regard to dependent claim 14, neither cited reference teaches or suggests a refund test period that depends on the class of service of the mail. The Examiner does not suggest that either reference teaches such a test period.

The remaining dependent claims are patentable over the cited references for at least the reasons described above with reference to the associated independent claim and any intervening claims.

With regard to independent claim 20, Appellants respectfully submit that the cited references do not teach or fairly suggest at least the following:

a tracking code lifetime period associated with the tracking identifier used on each of the respective mail pieces,

Furthermore, the cited references do not teach or suggest such variable test periods based upon the lifetime of the codes.

With regard to independent claim 21, Appellants respectfully submit that the cited references do not teach or fairly suggest at least the following::

the determination of whether the refund request is valid includes determining whether the refund request corresponds to a prior postage dispense operation associated with the user and determining whether the

tracking identifier has been observed in a mail stream during a variable test period for the mail piece and wherein,
processing the refund request further comprises crediting a postage account held with a postage provider,
wherein the variable test period depends upon the class of service of the mail piece.

Furthermore, the cited references do not teach or suggest such prior postage dispense operation test with regard to association with the user and such variable test periods.

With regard to claims 22-23, the cited references do not teach or suggest at least a fine.

Accordingly, Appellants respectfully submit that the rejection is clearly in error and should be reversed.

IX. Conclusion

In Conclusion, Appellants respectfully submit that the final rejection of claims 1, 3-12, 14 and 16-23 is in error for at least the reasons given above and should, therefore, be reversed.

Respectfully submitted,

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VIII – CLAIMS APPENDIX
APPENDIX A

1. A method for processing a postage refund request for a mail piece comprising:

receiving a refund request including a tracking identifier from a user system;
processing and paying the refund request substantially immediately after receiving the request and before review of the refund request to determine validity;
then determining if the refund request is valid;
if the refund request is not valid, initiating a refund error process,
wherein,
the determination of whether the refund request is valid includes determining whether the tracking identifier has been observed in a mail stream; and
monitoring the tracking identifier after processing the refund request in order to determine if the mail piece is used after a refund payment.

3. The method of claim 2 wherein:

the refund error process includes a fraud inquiry.

4. The method of claim 3 wherein:

the refund error process includes notifying a postal authority.

5. The method of claim 1 further comprising:

determining if the mail piece is associated with the user that submitted the refund request.

6. The method of claim 4 further comprising:

determining if a refund test period has completed; and

if the refund test period is not completed, performing another determination of whether the mail piece has been observed in the mail stream.

7. The method of claim 3 wherein:
the tracking identifier includes a 22-digit delivery confirmation PIC code.
8. The method of claim 3 wherein:
the tracking identifier includes a PLANET code and a POSTNET code.
9. The method of claim 3 wherein:
the tracking identifier includes a postage meter serial number and a postage meter postage ascending register value.
10. The method of claim 3 wherein:
the tracking identifier includes a postal ID tag.
11. The method of claim 1 wherein:
the refund request includes a user selection from a list of mail pieces.
12. The method of claim 1 wherein:
the refund request is received from the user via a postage broker.
14. The method of claim 6 wherein:
the refund test period is variable; and
the variable length of the refund test period depends upon the class of service of the mail piece.
16. The method of claim 1 wherein:
processing the refund request includes aggregating a group of valid refund requests received from a plurality of users associated with a postage broker.
17. The method of claim 1 wherein:

processing the refund request includes aggregating a group of valid refund requests received from a plurality of users and sending a group refund request associated with the aggregated group of valid refund request to a postal authority.

18. The method of claim 16, further comprising:
sending aggregated refund request data to the postage broker.

19. The method of claim 11, wherein:
the tracking identifier is unique over a first period of time.

20. A method for processing a postage refund request for a plurality of mail pieces comprising:

receiving a plurality of refund requests, each including an associated tracking identifier from each of a respective plurality of user systems;

determining if each of the refund requests is valid;

for each of the refund requests, if the refund request is not valid, initiating a refund error process,

for each of the refund requests, if the refund request is valid, processing the refund request, wherein,

the determination of whether the refund request is valid includes determining whether the tracking identifier has been observed in a mail stream during a variable test period for each of the mail pieces and processing the refund request includes sending aggregated refund request data to a postage broker, wherein the variable test period depends upon a tracking code lifetime period associated with the tracking identifier used on each of the respective mail pieces.

21. A method for processing a postage refund request for a mail piece comprising:

providing an interactive listing of at least two selections of recent postage transactions for a user;

receiving a refund request including a tracking identifier from a user system includes receiving a selection from the interactive listing;

determining if the refund request is valid;

if the refund request is not valid, initiating a refund error process,

if the refund request is valid, processing the refund request, wherein,

the determination of whether the refund request is valid includes determining whether the refund request corresponds to a prior postage dispense operation associated with the user and determining whether the tracking identifier has been observed in a mail stream during a variable test period for the mail piece and wherein,

processing the refund request further comprises crediting a postage account held with a postage provider,

wherein the variable test period depends upon the class of service of the mail piece.

22. The method of claim 21, further comprising:

monitoring the tracking identifier after processing the refund request in order to determine if the mail piece is used after a refund payment,

if the mail piece is used after a refund payment, assessing a postage fee and a fine.

23. The method of claim 20, further comprising:

if any of the tracking identifiers are observed in the mail stream, assessing a postage fee and a fine to the broker.

Appendix IX – Evidence Appendix

None

Appendix X – Related Proceedings Appendix

None